

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 12760 of Embassy Park Associates Limited Partnership, pursuant to Article 75, Section 7501.4 of the Zoning Regulations, for further processing of a Planned Unit Development for property located south of Ward Circle between New Mexico and Massachusetts Avenues, N. W., (Square 1601, Lot 2) (Assessment and Taxation Lots 813, 814 and 815).

HEARING DATE: September 27, 1978

DECISION DATE: October 4, 1978

FINDINGS OF FACT:

1. The subject property is located approximately 1/4 mile south of Ward Circle between Massachusetts and New Mexico Avenues, N.W. The property is carried as assessment and taxation Lots 813, 814 and 815, which make up record Lot 2.
2. The land included in the PUD is split zoned between R-5-A and R-5-B. A 200 foot wide R-5-B zone is found parallel to Massachusetts Avenue; the remainder of the site is zoned R-5-A.
3. Lot 815, on which the proposed development is to occur, is approximately 8.73 acres or 380.278 square feet in area. The lot forms the largest portion of the entire 13.62 acre PUD. The site is wooded and irregular in topography.
4. The eastern edge of the site borders the Glover-Archbold Nature Trail and Park (a Federal Reservation) and slopes sharply to the south and east. The western portion of the site is generally less topographically irregular and slopes more gently to the south and east.
5. Immediately north of the site is a 149 unit town house development by Kettler Brothers which is presently under construction and which was approved by the Board in Case No. 12395. North of the townhouse development is a parking lot used by American University for its students and faculty. It accomodates over 600 cars. Across Massachusetts Avenue from the subject site are the Berkshire and Greenbrier Apartments which have a total of approximately 938 units. To the south of the site is located the remainder of the former Glover Estate which totals approximately 13.42 acres and which is under construction in accordance with Board approval in Case No. 12609. A total of 192 dwelling units in an apartment building

and 200 stacked units in townhouse style buildings will be built.

6. This application is for further processing of a modification to a Planned Unit Development which was given final approval by the Zoning Commission in October of 1970. Of the 13½ acre site, only the first phase of the PUD, the 126 unit condominium known as Foxhall East was constructed. As originally approved in 1970, the PUD was to consist of 485 apartment units in three high rise buildings and fifteen townhouses.

7. The applicant now proposes to construct approximately ninety single family townhouses and a 352 unit apartment building.

8. Under the original approval by the Zoning Commission for that portion of the tract known as Lot 815, two high rise apartment buildings and fifteen townhouses, sixteen percent lot occupancy and a 1.2218 FAR were provided, resulting in a permitted gross floor area for Lot 815 of approximately 485,722 square feet. The height of the apartment buildings was set at a maximum of ninety feet and parking was to be provided at a ratio of not less than one per dwelling unit.

9. By Z.C. Order No. 218 dated May 11, 1978 in Case No. 76-21, the Zoning Commission set out guidelines for further development of the Planned Unit Development. As hereinafter found and subject to the conditions imposed herein, the applicant has met, through testimony and evidence the requirements of Section 7501.4 and has followed the guidelines, conditions and standards set forth in Zoning Commission Order No. 218.

10. As required by Paragraphs 7501.41a-f the applicant has submitted plans for the project consisting of thirty seven sheets labeled D-1 through D-14 and A-1 through A-23 and dated September 22, 1978 and designated Exhibit 23. For comparison purposes, the applicant also submitted the plans approved by the Zoning Commission and dated March 6, 1978 as Exhibit 22 in these proceedings (Exhibit 41 in Zoning Commission Case No. 76-21).

11. As permitted in Paragraphs 7501.43 and 7501.44, it is the duty and responsibility of this Board to implement the Planned Unit Development subject to authority to amend the approved Planned Unit Development under the restrictions set forth in said paragraphs. In brief, the changes requested by the applicant, all minor in nature, are as follows:

a. The Zoning Commission approved a total of 450 units for Lot 815 consisting of 100 single-family townhouses and 350 units. Applicant proposed to decrease the total number of units by eight, providing ten fewer townhouses and two more apartment units.

b. The Zoning Commission approved the Planned Unit Development with a lot occupancy of 19.1 percent and a gross floor area of approximately 446,000 square feet. The applicant has requested a slightly lower lot occupancy of nineteen percent and a slight increase in gross floor area to approximately 449,433 square feet or a 0.76 percent increase as it relates to Lot 815.

c. The Zoning Commission approved off-street parking of 388 spaces to serve the apartment house and 125 spaces to serve the townhouses. Applicant requests increase in the parking to serve the townhouses to 133 and will provide 388 spaces for the apartment house.

d. Under the Zoning Commission approval, the buildings were located as shown on Exhibit 22 herein. However, the Zoning Commission provided that, as approved by the Board of Zoning Adjustment, the buildings could be changed as to location and arrangement. Applicant's site plan, Sheet D-1 of Exhibit 23, has relocated the townhouses to provide a mews concept and in accordance with the results of negotiations with abutting property owners. The apartment house has remained essentially as it was approved.

e. The Zoning Commission's approval of landscaping was shown generally in Sheet D-1 of Exhibit 22. The applicant's proposed landscaping, which has been worked out with abutting property owners with a full provision made for plantings, berms and fences, is submitted to the Board as required by paragraphs one, seven and twelve of the conditions of the Zoning Commission Order.

f. While not representing a change in the plans from previous approval by the Zoning Commission, the applicant also seeks approval of roof structures as provided in Paragraph 7501.46 of the Regulations.

12. The changes requested by the applicant as described in paragraph five above have been reached after careful and detailed study by the applicant, its consultants, abutting property owners and the various agencies and departments concerned including Department of Environmental Services, Department of Transportation, National Park Service and Municipal Planning Office. The Board finds that the proposed development, including the changes requested by the applicant, is in harmony with the objectives of the Article 75 and in accord with the intent of the Zoning Commission's approving Order. The applicant meets the guidelines, conditions and standards set forth in Zoning Commission Order No. 218, which are specifically incorporated herein by reference, with the changes herein approved as follows:

a. The maximum number of units proposed in this further processing is eight fewer than approved by the Zoning Commission. The single family townhouses are reduced from 100 to ninety and the maximum number of apartment units is increased from 350 to 352.

The zoning calculations are shown on the plans, Sheet D-1. The gross floor area of the development of the townhouses and apartment house will comply with the measurements and the methods of measurement permitted under the Zoning Regulations and previous Order of the Zoning Commission as shown on the plans submitted in Exhibit 23.

The height of the apartment building is precisely as previously approved by the Zoning Commission with setbacks virtually identical also. The location and arrangement of the buildings have been changed in order to provide more open space in a useable fashion for the benefit of the owners of units within the project and also to provide more open space at the edges of the project benefiting surrounding property owners. The height of the townhouses is as previously approved.

b. The setbacks for the apartment building are in accordance with the 1910 Height Act and are generally as shown on the site plans submitted as Sheet D-1, Exhibit 23.

c. Parking for the project meets all the conditions of sub-paragraph three and the off-street parking has been increased by eight spaces. The applicant will require all apartment tenants, regardless of whether or not they own a vehicle, to lease a parking space. Each townhouse shall be assigned its own individual parking spaces and there shall be an additional twenty-five percent of spaces for guest parking.

d. The areas of the apartment units as well as the townhouses will comply with paragraph four. A minimum of sixty percent of the units will be for sale and the remainining will be for rent or for sale. The apartment building will be a maximum of ten stories from the point of measurement as established in accordance with the 1910 Height Act.

e. Access to the property will be from Massachusetts Avenue and New Mexico Avenue as shown in the site plan submitted as Exhibit 41. The access to Massachusetts Avenue will be by way of a private driveway with right-turn-only onto and off Massachusetts Avenue during peak rush hours. As shown in the plans submitted with the application, the Foxhall East Administration Building accessory to the Foxhall East Condominium will be altered and reconstructed at applicant's expense to provide a caretaker apartment and other accessory uses, substantially as previously approved.

f. By separate agreement, the applicant has conveyed to Foxhall East, Inc. land to eliminate the claimed encroachment. The landscape plan has been worked out mutually with Foxhall East.

g. Fencing, berms and similar landscaping elements have been negotiated and worked out with abutting property owners; namely, the National Park Service and Foxhall East. See Exhibit 23, Sheets D-12 through D-14. The applicant has worked with the National Park Service and the final fencing is subject to National Park Service and this Board's approval as provided in the conditions herein. The National Park Service has indicated to applicant that approval of any fence should await the completion of installation of other grading and landscaping.

h. Regarding storm drainage, the applicant is not tying into the storm water system of Foxhall East, Inc. The applicant has worked with the National Park Service to include information necessary for an environmental assessment in cooperation with the Park Service and the Park Service has indicated, by letter dated September 26, 1978, that it will approve the storm drainage plan.

i. The applicant in its plans has made an effort to preserve as many mature trees as can reasonably be retained on the site and a substantial amount of additional trees will be provided on the landscape plan, Sheets D-12 through D-14.

j. The applicant will cause to be placed at entrances to the project signs indicating that the driveway is a private driveway for the use of the occupants, guests and business invitees only and will maintain the said driveway as a private facility.

k. The applicant has coordinated with the District of Columbia Department of Transportation with regard to encouraging public transportation by providing a walkway to the property and by placing impediments in the driveways in an effort to deter through traffic. The design of the driveway by virtue of its curve radii and signs prescribed above has made an effort to deter through traffic. No substantial increase in parking has been requested.

l. The provisions of paragraph twelve relate to final landscape plan and grading and drainage plan. These plans have been coordinated with the abutting property owners, including the National Park Service. Plans indicating the location of buildings, roads, through traffic impediments, sidewalks, water and sewer lines, inlets and basins, proposed connection to water lines, sanitary and storm sewers as well as proposed

erosion control measures have all been shown on the plans submitted as Exhibit 23.

m. The applicant has stated that it will comply with all other applicable codes and ordinances of the District of Columbia.

n. The applicant has indicated that it will record an appropriate amendment to the Article 75 Covenant pursuant to Sub-section 7501.2.

13. Pursuant to Paragraph 7501.46, this Board has authority to approve roof structures proposed by the applicant under Section 3308. The roof structures for the project are shown on Sheets A-18 and A-21 of Exhibit 23. All roof structures, with the exception of the center portion of the roof structure above the elevators, comply in all respects with the Zoning Regulations, Section 3308 as a matter-of-right. The roof structures consist of mechanical and elevator penthouse with a stairwell, as indicated on Sheet A-18. The uses shown on A-18 within the penthouse will not be implemented because of the restrictions of the 1910 Height Act. The swimming pool will be sunk into the building and safety fences will be provided as shown on Sheet A-21.

That small portion of the penthouse above the elevators exceeds the height of 18'6" permitted by the Zoning Regulations by approximately seven to nine feet. This height is necessary in order to permit the elevator to open at the roof level providing access to the 352 unit occupants. Without the approval of this Board, as a variance, it would be unduly burdensome and a practical difficulty on the occupants utilizing the accessory swimming pool since the occupants would have to get off the elevators at the next floor below the swimming pool and walk up to and down from the swimming pool level on the roof through a separate stairwell that would have to be provided. Moreover, this small portion of the roof structure that exceeds the 18'6" limitation is substantially removed, not only from all property lines but from any other property that would be improved for residential or commercial use. To preclude the elevator from reaching the roof level does not serve any purpose expressed in Section 3308, especially in light of the fact that the area that exceeds the height limit is small and is substantially removed from all abutting properties. On the other hand, provision of an elevator access to the roof will be in keeping with a fine quality residential development.

14. By report dated October 2, 1978, the Municipal Planning Office recommended the approve of the roof structure on the grounds that MPO has encouraged the use of roof tops especially for recreational purposes.

The MPO reported that, given the height of this building and the number of units (352), elevator service to the roof top swimming pool and deck is a reasonable requirement. MPO also noted that the area of the entire roof structure is well below that allowed as a matter-of-right and that the location of the roof structure will cause no adverse affects on neighboring property nor will it encroach upon sight lines from the Foxhall East Condominium building to the north. The Board so finds.

15. By report dated September 26, 1978, the Municipal Planning Office recommended the approval of the application subject to the following conditions; (1)that the sauna, toilets and lounge be eliminated from the roof of the apartment building (Drawing No. A-18) (2)the maximum gross floor area be limited to a maximum of 449,433 square feet; (3)that applicant shall receive approval of fencing and/or landscaping elements to be constructed adjacent to Glover-Archbold Park from the National Park Service (4) that construction of the proposed development proceed in accordance with the documentation submitted to the Board of Zoning Adjustment in Case No. 12760.

16. The National Park Service by letter dated September 26, 1978 indicated that the proposed grading, drainage and storm water systems are acceptable. The Park Service wished to reserve its approval on the fencing and landscaping adjacent to Glover-Archbold Park until the proposed apartment building is actually under construction.

17. The Advisory Neighborhood Commission 3-D, was in favor of the application and recommended its approval.

18. The Spring Valley-Wesley Heights Citizens Association, Foxhall East, Inc. and Fohall Community Services Company had no objection to the further processing of the application and recommended its approval.

#### CONCLUSIONS OF LAW AND OPINION

Based on the above Findings of Fact, the Board concludes that BZA Application No. 12760 complies with the provisions of Zoning Commission Order No. 218 except as specifically approved herein under Paragraph 7501.43 and 7501.44. The changes are well within the restrictions imposed by Paragraph 7501.43 and 7501.44 and are in harmony with the objective of Article 75 and the intent of the Zoning Commission's approving Order.

Accordingly, it is ORDERED that the application is GRANTED subject to the following CONDITIONS:

1. The applicant shall comply with all the conditions of Zoning Commission Order No. 218, dated May 11, 1978.

2. Development shall occur in accordance with the plans submitted to and approved by the Board, marked as Exhibit 23 of the record, as those plans are modified in conditions 3 and 4 below.
3. The roof structures as shown on Sheet A-18 of Exhibit 23 shall be modified to delete the toilets, party room and sauna which are not permitted under the Act of 1910.
4. As provided in paragraph 7 in the conditions of Zoning Commission Order No. 218, an appropriate fence along the property line adjacent to park land owned by the National Park Service shall be provided. Such fence shall be provided or constructed at the time acceptable to the National Park Service and must furthermore be approved by the National Park Service and this Board. Upon approval of proposed fence by the National Park Service, the fence must be submitted to the Board for approval. No Certificate of Occupancy shall be issued until the fence is approved by both the Park Service and the Board.
5. The Order of the Board shall be valid for a period of eighteen months. Within such period the plans therefore shall be filed for the purpose of securing a building permit.
6. The Board shall retain jurisdiction to interpret and apply the terms and conditions of this Order and to make plan corrections and minor modifications of such plans.
7. Prior to the issuance of any building permit, in accordance with the requirements of Sub-section 7501.2 and Paragraph 7501.52, the owner of the property shall record a covenant in the land record of the District of Columbia, acceptable to the Zoning Regulations Division and the Office of the Corporation Counsel.

VOTE:

- 5-0 (Walter B. Lewis, Charles R. Norris, Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants to grant)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 8 NOV 1978

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 12760, of Embassy Park Associates Limited Partnership, pursuant to Article 75, Section 7501.4 of the Zoning Regulations, for further processing of a Planned Unit Development for property located south of Ward Circle between New Mexico Avenue and Massachusetts Avenues, N.W., (Square 1601, Lot 2) (Assessment and Taxation Lots 813, 814 and 815).

HEARING DATE: September 27, 1978

DECISION DATE: October 4, 1978

DISPOSITION: The application was GRANTED with conditions by a vote of 5-0 (Walter B. Lewis, Charles R. Norris, Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants to GRANT)

FINAL DATE OF ORDER: November 8, 1978

ORDER

The subject application was granted by the Board subject to seven conditions. Condition No. 4 of the Order required that as provided in paragraph 7 in the conditions of Zoning Commission Order No. 218, an appropriate fence along the property line adjacent to park land owned by the National Park Service shall be provided. Such fence shall be provided or constructed at the time acceptable to the National Park Service and must furthermore be approved by the National Park Service and this Board. Upon approval of proposed fence by the National Park Service, the fence must be submitted to the Board for approval. No Certificate of Occupancy shall be issued until the fence is approved by both the Park Service and the Board.

By letter dated April 30, 1982, the National Park Service approved the location and the timing of construction of the fence in accordance with the amended fence plan assigned National Capital Parks drawing No. 836/80 010A, sheet 1 of 1. By letter dated April 30, 1982, counsel for the applicant submitted the revised fence plan as approved by the NPS and known as Exhibit No. 35A of the record, for the Board's approval. At the Public Meeting of May 5, 1982, the Board reviewed the proposed fence plan approved by the NPS.

The Board concludes that the proposed plan adequately satisfies the concerns of the Board. Upon consideration of the foregoing facts, it is hereby ORDERED that the AMENDED fence plan, Exhibit No. 35A of the record, satisfies condition No. 4 of the Board's Order and is therefore APPROVED.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Douglas J. Patton and Charles R. Norris to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

DECISION DATE: May 5, 1982

ATTESTED BY: \_\_\_\_\_

*Alan E. [Signature]*

FINAL DATE OF ORDER: \_\_\_\_\_

**JUL - 6 1982**

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.